

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5691 of 2018

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Digambar Jha, Son of Sri Lambodar Jha, Head ClerkDismissed District Welfare Office, Jamui, Permanent Resident of Village- Pachgachhiya, Police Station- Bihra, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Schedule Caste & Schedule Tribe Welfare Department, Government of Bihar, Patna
2. The Principal Secretary/Secretary Schedule Caste and Schedule Tribe Department, Government of Bihar , Patna
3. The Director, Schedule Caste/Schedule Tribe Welfare Department, Government of Bihar, Patna.
4. The Deputy Director, Welfare, Tirhut Division, Saharsa.
5. The District Magistrate, Supaul.
6. The District Welfare Officer, Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Adv.
For the Respondent/s : Mr. Rajesh Kumar (AC to GP-3)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 13-05-2024

Heard learned counsel for the petitioner and learned counsel for the State.

2. The present writ petition has been filed for setting aside the order contained in Memo No.125 dated 17.01.2018 (annexed as Annexure-6) passed by the Schedule Caste/Schedule Tribe Welfare Department, Government of Bihar, Patna by which the petitioner was dismissed from the service and also to set aside the order dated 01.08.2018



contained in Memo No.169 (annexed as Annexure-9) passed by the Secretary-cum-Appellate Authority, Patna.

3. Learned counsel for the petitioner submits that the petitioner was working as a Clerk in the office of the District Welfare Officer, Supaul and he was transferred on 20.01.2016 by the order passed from the level of State of Bihar to the District Welfare Officer, Nawada where the departmental proceeding has been initiated against the petitioner. Counsel submits that he has appeared before the Conducting Officer and deny all the charges. Counsel further submits that the Conducting Officer has conducted the enquiry and submitted his report *vide* Memo No.2553 dated 11.10.2017 on the basis of which second show cause was issued to the petitioner. The petitioner has submitted his reply to the second show cause on 28.10.2017 before the concerned authority. Thereafter, the respondent Director without considering the defence of the petitioner, passed a cryptic order dismissing the petitioner from service *vide* Memo No.125 dated 17.01.2018 which is the order impugned. Counsel further submits that the petitioner has preferred appeal before the Principal Secretary, S.C/S.T., Welfare Department, Government of Bihar, Patna against the order of dismissal on 27.01.2018 and the Appellate Authority



without considering this aspect of the matter that for the alleged wrong, one Suresh Prasad, Nazir and Prakash Chandra Yadav, Clerk both were suspended. But, a liberal view has been taken in case of Prakash Chandra Yadav and ordered for compulsory retirement. In case of Suresh Prasad, after the departmental proceeding, the order of compulsory retirement was passed, whereas, the petitioner has been dismissed from the service and the punishment was exorbitant.

4. Learned counsel for the petitioner submits that from the charge memo which is Annexure-2, it becomes clear that there is not a single evidence has been shown which is in gross violation of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'CCA Rules, 2005'). Counsel further submits that in reply to the second show cause, there is no whisper in the final order by which he has been punished by a major punishment of dismissal from the service. Counsel also submits that the Appellate Authority has also not considered a single point which he has raised in the memo of appeal and therefore, he submits that the order passed in the departmental proceeding are in gross violation of the CCA Rules, 2005 and fit to be set aside. Counsel further submits that for the same wrong, different punishment



has been given to the different persons. Prakash Chandra Yadav who was clerk having the same charge has been compulsory retired, whereas, the petitioner was dismissed from the service.

5. Learned counsel for the State on the other hand submits that in the counter affidavit, every point which has been raised by the petitioner has been well discussed. Counsel submits that upon consideration of the reply to the second show cause, the Enquiry report was submitted by the Conducting Officer in which it was found that dereliction of duty and responsibility has been shown by the petitioner and he has embezzled the huge amount of the Government fund due to which, the punishment order has been passed. Counsel further submits that there were three persons who has alleged to commit the said wrong i.e., the Nazir, the Head Clerk (petitioner) and the Clerk. Counsel submits that upon consideration, the Nazir and the Head Clerk having the higher responsibility have been punished by way of dismissal from the service. Counsel further submits that there is absolutely no illegality made in the departmental proceeding and neither there is any violation of natural justice nor there is any discrepancy made in the decision making process.

6. Upon hearing the parties and going through the



charge memo as well as enquiry report, it transpires to this Court that every allegation and the evidence which has been mentioned in the charge memo are basically relating to the documents of transaction and different letters about which there are already discussion made in the charge memo. And since, all the evidences are based on the documents, therefore, individual evidences are not required in the present case in view of the Court.

7. Therefore, this Court is not inclined to interfere in the punishment order. But, so far as the appellate order is concerned, it transpires to this Court that whatever be the contents and the grounds taken in memo of appeal, it has not been taken into consideration by the Appellate Court which it ought to be discussed as due to what reason the grounds taken in memo of appeal has not been taken into consideration.

8. As such, this Court hereby set aside only the Appellate order i.e. order dated 01.08.2018 contained in Memo No.169 (annexed as Annexure-9) passed by the Secretary-cum-Appellate Authority, Patna and directs the Appellate Authority to pass a fresh order considering all the points/grounds raised by the petitioner before him in the memo of appeal within 90 days from the date of production of the order.



9. It is made clear that the said 90 days shall be counted from the date of end of general elections of Lok Sabha, 2024.

10. Accordingly with the aforesaid directions, this writ petition is hereby disposed off.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA

